



Promoting the wise use of land

**COUNTY OF SAN LUIS OBISPO
DEPARTMENT OF PLANNING AND BUILDING
STAFF REPORT**

SUBDIVISION REVIEW BOARD

MEETING DATE October 7, 2013		CONTACT/PHONE Jo Manson (805) 781-4660 jmanson@co.slo.ca.us		APPLICANT Rocky Canyon Properties, LLC		FILE NO. C13-0012 SUB2012-00024	
SUBJECT Request by Rocky Canyon Properties, LLC for one (1) Conditional Certificate of Compliance (C13-0012) to legalize one parcel of approximately 370 acres. The proposed project is within the Agriculture land use category and is located south of State Highway 41 and approximately 1120 feet east of the intersection of Rio Vista Lane and River View Lane, east of the City of Atascadero. The site is in the El Pomar-Estrella planning area.							
RECOMMENDED ACTION Approve Conditional Certificate of Compliance C13-0012 authorizing the issuance of one (1) conditional certificate of compliance based on the findings listed in Exhibit A and the conditions listed in Exhibit B.							
ENVIRONMENTAL DETERMINATION This project is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. It can be seen with certainty that there is no possibility that this project may have a significant effect on the environment; therefore, the activity is exempt from and not subject to CEQA. [Reference: State CEQA Guidelines sec. 15061(b)(3), General Rule Exemption]							
LAND USE CATEGORY Agriculture		COMBINING DESIGNATION None		ASSESSOR PARCEL NUMBER 034-411-009 Portion and 034-451-008		SUPERVISOR DISTRICT(S) 5	
PLANNING AREA STANDARDS: Section 22.94.020.D, Areawide Standards, Light and Glare							
LAND USE ORDINANCE STANDARDS: Section 22.22.040 Minimum Parcel Size for Agriculture, Title 22.							
EXISTING USES: Agriculture – undeveloped, grazing							
SURROUNDING LAND USE CATEGORIES AND USES: North: Residential Rural / single-family residences, vacant East: Agriculture / grazing, vacant South: Agriculture / single-family residences West: Agriculture / single-family residences							
OTHER AGENCY / ADVISORY GROUP INVOLVEMENT: The project was referred to: Public Works, Environmental Health, Ag Commissioner, Cal Fire, City of Atascadero							
TOPOGRAPHY: Moderate to steeply sloping.				VEGETATION: California annual grassland, oak woodland, ephemeral drainage			
PROPOSED SERVICES: Water supply: On site well. Sewage Disposal: Individual septic system Fire Protection: CalFire				ACCEPTANCE DATE: August 26, 2013			
ADDITIONAL INFORMATION MAY BE OBTAINED BY CONTACTING THE DEPARTMENT OF PLANNING & BUILDING AT: COUNTY GOVERNMENT CENTER γ SAN LUIS OBISPO γ CALIFORNIA 93408 γ (805) 781-5600 γ FAX: (805) 781-1242							

PROJECT HISTORY:

Under the Subdivision Map Act (Section 66499.35) and the County's Real Property Division Ordinance (Section 21.02.020), any person owning real property or vendee may request the County to make a determination whether the real property complies with the Subdivision Map Act and the County's Real Property Division Ordinance. If the County determines the real property is a legally created parcel which complies, it is required to issue and record an (unconditional) certificate of compliance. If the County determines the real property is not legally created, and therefore is not in compliance with the Subdivision Map Act and the County's Real Property Division Ordinance, it is then required to issue and record a conditional certificate of compliance. The County may, as a condition to granting a conditional certificate of compliance, impose any conditions that would have been applicable to the division of the property at the time the applicant acquired his or her interest therein.

The conditional certificate of compliance parcel is an approximate 370 acre parcel that is comprised of Lots 151, 152 and 154 of the Subdivision of parts of the Ranchos La Asuncion and Atascadero and adjacent lands per map recorded December 27, 1888 in Book A, Page 1 of Maps. Based upon a parcel size of approximately 370 acres, a pre-1972 deed would establish the legality of the parcel if the parcel had been conveyed by deed separately from surrounding land prior to March 4, 1972. There is not a pre-1972 deed for this specific parcel which deeded it separately from surrounding land; the first time the parcel was left as an illegal remainder from earlier illegal conveyances was on March 14, 2006 (Document # 2006-024159 and -024161). Based upon the approximate 370 acre parcel size, the parcel size was a violation of the County's Lot Division Ordinance and State Subdivision Map Act because lots 40 acres or more could not be created after March 4, 1972 without first having a subdivision approved by the County Subdivision Review Board (SRB). A map was required to be approved to create parcels after March 4, 1972, therefore the parcel was not legally created. Therefore, a conditional certificate of compliance is required.

Applicable deed history is as follows:

February 3, 1911 – 92 DDS 2 recorded January 8, 1912

Deed from S. Sussman et ux to George M. Perine, an undivided $\frac{1}{2}$ interest. Deed includes numerous lots noted in the 1888 map. In particular Lots 74, 75, 102, 112, 151, 152, 153, 154 and 155 are included.

August 27, 1912 – 93 DDS 403 recorded September 10, 1912

Estate of Samuel Sussman, deceased, distribution of assets. $\frac{1}{2}$ undivided interest from Samuel Sussman to Emilie Sussman, surviving wife. Includes numerous lots noted in the 1888 map. In particular Lots 74, 75, 102, 112, 151, 152, 153, 154 and 155 are included.

July 29, 1915 – 104 DDS 426 recorded August 2, 1915

Deed from George M. Perine, Florence G. Perine and Emilie Sussman to Minnie Brill Whittier. Deed includes numerous lots noted in the 1888 map. In particular Lots 74, 75, 102, 112, 151, 152, 153, 154 and 155 are included.

March 4, 1926 – 12 OR 86 recorded April 5, 1926

Deed from Minnie Brill Whittier et con to William Brill. Deed includes numerous lots noted in the 1888 map. In particular Lots 74, 75, 102, 112, 151, 152, 153, 154 and 155 are included.

September 8, 1931 – 116 OR 374 recorded September 10, 1931

Deed from William Brill et ux to Empire State Corporation, LTD. Deed includes numerous lots noted in the 1888 map. In particular Lots 74, 75, 102, 112, 151, 152, 153, 154 and 155 are included.

June 29, 1935 – 171 OR 199 recorded August 21, 1935

Deed from Empire State Corporation, LTD to William Brill, et ux. Deed includes numerous lots noted in the 1888 map. In particular Lots 74, 75, 102, 112, 151, 152, 153, 154 and 155 are included.

April 1, 1942 – 321 OR 295 recorded May 7, 1942

Deed from Kate M. Brill, a widow to Rasmus G. Nielsen, et ux. Deed includes numerous lots noted in the 1888 map. In particular Lots 74, 75, 102, 112, 151, 152, 153, 154 and 155 are included.

April 2, 1942 – 321 or 298 recorded May 7, 1942

Deed from Rasmus G. Nielsen, et ux. to Edward C. Morgensen, et ux. Deed includes numerous lots noted in the 1888 map. In particular Lots 74, 75, 102, 112, 151, 152, 153, 154 and 155 are included.

May 13, 1946 – 412 OR 110 recorded July 1, 1946

Deed from Edward C. Morgensen, widower to Hans Heilmann, et al. Deed includes numerous lots noted in the 1888 map. In particular Lots 74, 75, 102, 112, 151, 152, 153, 154 and 155 are included.

July 1, 1946 – 412 OR 117 recorded July 1, 1946

Estate of Mildred M. Morgensen, deceased, distribution of assets. Includes numerous lots noted in the 1888 map. In particular Lots 74, 75, 102, 112, 151, 152, 153, 154 and 155 are included. Numerous adjacent lots were conveyed together on the same deed.

February 24, 1971 – 1607 OR 316 recorded March 3, 1972

Deed from Heilmann (numerous family members named Heilmann) to Heilmann Bros. Includes Lots 2 through 7, 17, 18, 34 through 42, 81, 82, 85, 86 (exceptions for portions of Lots 81, 82, 85 and 86) and a portion of Lot 8.

April 12, 1972 – Tract 421, Book 8 of Maps, Page 13

Subdivision of Lots 148, 149, 150 and 153. At the request of Klaus Heilmann.

June 29, 1972 – COAL72-150, Book 8 of Parcel Maps, Page 96

Lot line adjustment between Lots 155 and 113. Lot 155 became a portion of COAL72-150, Parcel A. At the request of Klaus Heilmann.

July 24, 1972 – 1681 OR 115 recorded July 31, 1972

Deed from Heilmann (numerous family members named Heilmann) to Donald E. Langley. Includes Lots 74, 75, 76, 130, 151, 152, 154 and 155 and other lots not adjacent to Lot 152. The property conveyed by this deed, consisting of multiple lots, was a portion of the property that was conveyed in deed 412 OR 117. This multi-lot parcel could have been separated from surrounding lands by deed prior to March 4, 1972 and would have been considered one multi-lot legal parcel. However, because this conveyance occurred after March 4, 1972, this was a violation of the County's Lot Division Ordinance and State Subdivision Map Act because parcels forty acres or more could not be created after March 4, 1972 (Lot Division Ordinance) without first having a subdivision approved by the County Subdivision Review Board. A map was required to be approved to create parcels at that time, therefore the multi-lot parcel that was conveyed was not legally created by deed.

December 2, 1974 - COAL74-218, Book 16 of Parcel Maps, Page 38

Lot line adjustment between Lots 15, 16 and 17 of Tract 421 (Lot 153 was a portion). At the request of Donald Langley.

December 28, 1978 – 2125 OR 474 recorded January 9, 1979

Deed from Heilmann (multiple family members) to Langley. Includes Lots 102 and 129. First time Lot 102 was conveyed and separated from surrounding land.

January 23, 1981 – 2303 OR 95 recorded February 3, 1981

Deed from Heilmann (multiple family members) to David B. Hamilton and Carol W. Hamilton. Includes Lot 112. First time Lot 112 was conveyed and separated from surrounding land.

September 30, 1988 – 3227 OR 3 recorded November 8, 1988

Estate of Donald E. Langley, deceased, distribution of assets to Janet A. Langley (wife). Includes Lots 74, 75, 102, 129, 130, 151, 152 and 154 and other lots not adjacent to Lot 152.

February 23, 1999 – Doc. #1999-021736 recorded March 26, 1999

Deed from Janet A. Langley to Leroy R. Davis and Donna J. Davis. Includes Lots 74 portion, 75, 102, 151, 152 and 154, and other lots not adjacent to Lot 152.

August 23, 1999 – Doc. #1999-063705 recorded September 1, 1999

Deed from Leroy R. Davis and Donna J. Davis to Leroy R. Davis and Donna J. Davis, Trustees of the Davis Family Trust. Includes Lots 74 portion, 75, 102, 151, 152 and 154, and other lots not adjacent to Lot 152.

December 27, 2002 – Doc. #2002-116721 recorded December 30, 2002

Deed from Leroy R. Davis and Donna J. Davis, Trustees to Robert A. Davis (10%), Jami Rushell Davis (10%), Jami Rushell Davis as custodian for Justin Clay Rupe (2.5%), and Jami Rushell Davis for Kory Russell Rupe (2.5%). Total conveyance accounts for 25% interest. Includes Lots 74 portion, 75, 102, 151, 152 and 154, and other lots not adjacent to Lot 152.

December 18, 2003 – Doc. #2004-000046 recorded January 2, 2004

Deed from Leroy R. Davis and Donna J. Davis, Trustees to Kelli Rae Rupe (5% interest). Includes Lots 74 portion, 75, 102, 151, 152 and 154, and other lots not adjacent to Lot 152.

December 18, 2003 – Doc. #2004-000047 recorded January 2, 2004

Deed from Leroy R. Davis and Donna J. Davis, Trustees (70%), Robert A. Davis (10%), Jami Rushell Davis (10%), Kelli Rae Rupe (5%), Jami Rushell Davis as custodian for Justin Clay Rupe (2.5%) and Jami Rushell Davis for Kory Russell Rupe (2.5%) to Rocky Canyon Properties, LLC. Includes Lots 74 portion, 75, 102, 151, 152 and 154 and other lots not adjacent to Lot 152.

March 30, 2006 – Doc. #2006-023210 recorded April 4, 2006

Deed from Rocky Canyon Properties, LLC to Leroy R. Davis and Donna J. Davis, Trustees. Includes Lots 74 portion, 75, and 102 and other property already subject to a land division.

March 14, 2006 – Doc. #2006-024159 recorded April 7, 2006

Deed from Leroy R. Davis and Donna J. Davis, Trustees to Del Robasciotti. Includes Lot 102. Lot 102 on a separate deed.

March 14, 2006 – Doc. #2006-024161 recorded April 7, 2006

Deed from Leroy R. Davis and Donna J. Davis, Trustees to Kelly V. Gearhart. Includes Lot 75. First time Lot 75 was conveyed and separated from surrounding land.

March 14, 2006 – Doc. #2006-024164 recorded April 7, 2006

Deed from Leroy R. Davis and Donna J. Davis, Trustees to Kelly V. Gearhart. Includes Lot 74 portion (APN: 034-491-011).

ORDINANCE COMPLIANCE:

This request is to legalize an approximately 370 acre parcel that was initially illegally subdivided in 1972. Pursuant to the Subdivision Map Act, this parcel should comply with the Land Use Ordinance standards in effect on December 18, 2003, as that is the date that the last of the current owners (i.e., Kelli Rupe), now known as Rocky Canyon Properties, LLC, acquired their interest in the property.

Minimum Parcel Size

Section 22.22.040 of the Land Use Ordinance establishes three methods for determining minimum parcel sizes in the Agriculture land use category. Each proposed parcel must be able to qualify for the requested minimum parcel size using all tests within each method of determining minimum parcel size. One of the methods for determining minimum parcel size applies to this project because the site has an existing grazing agricultural use. The agricultural use method is used in determining the minimum parcel size. This site is not under a Williamson Act agricultural preserve contract. Thus, the project was evaluated within the use method as follows (land use ordinance language in *italics*):

Subsection B:

- Use test.** *The minimum size for new parcels with existing agricultural uses shall be based on the type of existing agricultural use, as follows. Where a site contains more than one agricultural use, each new parcel shall satisfy the minimum parcel size for the qualifying agricultural land use.*

<i>Agricultural Land Use</i>	<i>Minimum Parcel Size</i>
<i>Irrigated row crops, specialty crops, nurseries, field crops, orchards and vineyards (examples: vegetables, strawberries, cut flowers and flower seed, avocados, kiwi, other fruits and nuts, wine grapes)</i>	<i>40 acres; Except parcels may be as small as 20 acres as provided in Subsection b.</i>
<i>Irrigated pasture, grain and hay (examples: alfalfa, irrigated grain and hay), and Dry farm orchards, vineyards</i>	<i>40 acres (80 acres)</i>
<i>Dry Farm field crops (examples: beans, specialty field crops) and grain and hay (examples: barley, wheat, oats, hay)</i>	<i>160 acres</i>
<i>Grazing</i>	<i>320 acres</i>

The minimum parcel size based upon the existing agricultural use (grazing) is 320 acres. The proposed parcel meets the required minimum parcel size based on the use test.

Subsection C:

Land capability test. *The minimum parcel size is to be based on the Natural Resources Conservation Service (NRCS), as set forth in the following table. Where a site contains more than one soil classification, each new parcel is to be designed so as to contain sufficient area of one soil type to satisfy the minimum parcel size requirement for the qualifying NRCS classification.*

Land Capability Classification	Minimum Parcel Size	
	Irrigated	Non-irrigated
<i>Class I or II</i>	20 acres	N/A
<i>Class III or IV</i>	40 acres (80 acres)	160 acres
<i>Class VI, VII or VIII</i>	320 acres	320 acres

The site's soils are classified by the Natural Resource Conservation Service as follows:

Linne-Calodo complex 9 to 30% slopes, non-irrigated Class 4
 Linne-Calodo complex 30 to 50% slopes, non-irrigated Class 7
 Linne-Calodo complex 50 to 75% slopes, non-irrigated Class 7

The minimum parcel size based upon the land capability test is 160-320 acres based on the non-irrigated Class 4 and 7 soils. The proposed parcel meets the required minimum parcel size based on the land capability test.

Quimby Fees

Title 21, the Real Property Division Ordinance, establishes an in-lieu fee for all new land divisions for the purpose of developing new, or rehabilitating existing, park or recreational facilities to serve the land division. Payment of the parkland fee for all undeveloped parcels is required and the project was been conditioned accordingly.

Inclusionary Housing Fees

Title 29, the Affordable Housing Fund, establishes an in-lieu fee to create a fund that would help to meet, in part, the housing needs of the County's very low, low, moderate income and workforce households. This fee was not established until 2008 when Title 22, Land Use Ordinance, was adopted by the Board of Supervisors (Ordinance No. 3169) and Title 29, Affordable Housing Fund Ordinance, was adopted by the Board of Supervisors (Ordinance No. 3171). Therefore, this project is not subject to payment of this fee.

Affordable housing fees were not established until 1991 when Title 18, Public Facilities Fees Ordinance, was adopted by the Board of Supervisors (Ordinance No. 2519). Because the standards applicable to this project go back to the time when the applicant acquired interest in the property (December 18, 2003), the project is subject to the affordable housing fees in place during Fiscal Year FY2003-2004. The project has been conditioned accordingly.

PLANNING AREA STANDARDS:

Section 22.94.020.D of the El Pomar-Estrella Area Plan requires protection of the night sky by ensuring all exterior lighting on buildings are shielded so that neither lamp nor reflector interior surfaces is visible from adjacent properties and include dark colored light hoods. This project is conditioned to use this type of lighting on any future buildings of the resulting parcel.

PASO ROBLES GROUNDWATER BASIN:

On August 27, 2013 the County of San Luis Obispo Board of Supervisors adopted Ordinance No. 3246, "An Urgency Ordinance of the County of San Luis Obispo, State of California establishing a moratorium on new or expanded irrigated crop production, conversion of dry farm or grazing land to new or expanded irrigated crop production and new development dependent

upon a well in the Paso Robles groundwater basin unless such uses offset their total projected water use, including certain exemptions". The ordinance applies to all properties that overlie the Paso Robles Groundwater Basin except those properties that overlie the Atascadero Sub-Basin and those properties served by County Service Area 16 or the San Miguel Community Services District.

The project site is located within the Paso Robles Groundwater Basin. A portion of the project site is in the Creston Subarea and a portion is in the Atascadero Sub-Basin Subarea. Section 5 of the Ordinance specifies those activities that are not subject to the Ordinance. One listed activity is "Any application for a land use permit, land division, general plan amendment, ordinance amendment, construction permit, grading permit or well that was submitted to the County, and accepted as complete, including any required fees, prior to the effective date of this Ordinance". This project was accepted on August 26, 2013 which is prior to the effective date of August 27, 2013 for the Ordinance. Therefore, this project is not subject to the Ordinance No. 3246. However, future construction permits would be subject to any urgency ordinance in effect at the time of submittal of permits.

CULTURAL RESOURCES:

The owner/applicant has agreed to completely avoid impacts to possible archeological resources associated with future building permits. Therefore, no archeology report was required to process this application. An archeological report would be required with future building permits and total avoidance of any archeological resources would be required with no associated impacts. The project has been conditioned accordingly.

STAFF COMMENTS:

Authority

Within the Subdivision Map Act, California Government Code Section 66499.35(b) describes the procedure for granting a Conditional Certificate of Compliance:

*"If a local agency determines that the real property does not comply with the provisions of [the Subdivision Map Act] or of local ordinances enacted pursuant to [the Subdivision Map Act], it **shall** issue a conditional certificate of compliance. A local agency **may**, as a condition to granting a conditional certificate of compliance, impose any conditions that would have been applicable to the division of the property at the time the applicant acquired his or her interest therein..." [emphasis added by staff]*

In this case, staff has determined that an unconditional certificate of compliance cannot be granted because the illegal division creating the parcel by deed conveyance occurred at a time when a map would have been required. As such, the county is required to issue a conditional certificate of compliance. The above section goes on to describe the County's authority in conditioning the certificate. Pursuant to the Subdivision Map Act, this parcel should comply with the Land Use Ordinance standards in effect on December 18, 2003 as that is the date that the last of the current owners (i.e., Kelli Rupe), now known as Rocky Canyon Properties, LLC, acquired their interest in the property.

AGENCY REVIEW:

Public Works – Documented proof of access per the platted road shown on A-MB-1 running along the northwesterly side of Lots 120, 118 and 113 of said map which connects the property rocky Canyon Road. No concerns and no conditions of approval required.

Environmental Health – No comments received.

Ag Commissioner – No concerns.

Cal Fire – Access to future development upon associated parcel must meet all relative standards in place at that time.

City of Atascadero – No comments received.

LEGAL LOT STATUS:

The one parcel was illegally created by a deed conveyance at a time when that was not a legal method of creating parcels.

ATTACHMENTS

Attachment 1 – Findings

Attachment 2 – Conditions of Approval

Attachment 3 – Project Graphics

Attachment 4 – Project Referral Responses

Attachment 5 – Conditional Certificate of Compliance